



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 14, 1992

Mr. Jerry E. Drake, Jr.
Assistant City Attorney
City of Denton
Municipal Building
Denton, Texas 76201

OR92-205

Dear Mr. Drake:

The City of Denton received a written request for access to all records of disciplinary action taken against nine named officers of the Denton Police Department. You claim that the requested information is excepted in whole or in part by various exceptions to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a, including subsection (g) of section 143.089 of the Local Government Code. Your request was originally assigned ID# 10076, then given file number RQ-54.

You have submitted for our inspection copies of materials contained in two separate sets of personnel files maintained for each of the named police officers. From the description of the first set of documents ("Appendix B"), we assume these represent the city or civil service commission personnel files of the officers. The second set of documents ("Appendix C") are the police department personnel files for each of the officers. You contend that the documents in the city or civil service personnel files are excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with section 143.089 of the Local Government Code, and by section 3(a)(2) of the Open Records Act. You also assert that the information in the police department personnel files is excepted from disclosure by sections 3(a)(1) (also in conjunction with Local Government Code section 143.089), 3(a)(8), 3(a)(11), and 3(a)(17) of the Open Records Act.

Section 3(a)(1) of the Open Records Acts excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 143.089 of the Local Government Code applies to

cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Subsection (f) governs the disclosure of information from civil service personnel files:

(f) The director [of the civil service commission] or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, *unless the release is required by law.* [Emphasis added.]

Local Gov't. Code § 143.089(f). In Open Records Decision No. 562 (1990), this office determined that subsection (f) prohibited the disclosure of information contained in civil service personnel files without the written permission of the police officer or firefighter only in situations that are not governed by the Open Records Act or other laws that require such information to be disclosed. The decision determined, in other words, that the Open Records Act was a "law" for purposes of subsection (f). Thus, subsection (f) does not make information confidential for purposes of section 3(a)(1) of the Open Records Act. Rather, it requires that the status of the information for purposes of public disclosure be determined by reference to the terms of the Open Records Act.

The materials comprising "Appendix B" of your letter are described as documents contained in the personnel files of the named officers and are addressed in connection with subsection (f) of section 143.089. You claim that the information is excepted from disclosure by section 3(a)(2) of the Open Records Act.

Section 3(a)(2), in pertinent part, protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This provision protects personnel file information from disclosure only if its release would result in an invasion of privacy under the standard developed for common law privacy under section 3(a)(1) of the act. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under that test, information may be withheld from public disclosure if it (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly offensive to a reasonable person and (2) the information is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-685 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977).

We have reviewed the documents in "Appendix B." With the exception of a paragraph in one of the documents, we find that there is a legitimate public interest in disclosure of the requested information. See Open Records Decision No. 562 at 9. The release of the information contained in the documents therefore would not cause an unwarranted invasion of personal privacy. Accordingly, no information other than this particular passage may be withheld from disclosure. The information that may be withheld has been marked.

Turning to subsection (g) of section 143.089, the next asserted exception to disclosure, we note that it authorizes the creation of a separate personnel file by the police or fire department for its internal use and establishes procedures governing the disclosure of information from the department personnel files:

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, *but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer.* The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file. (Emphasis added.)

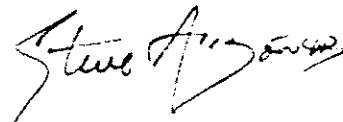
Local Gov't Code § 143.089(g).

Open Records Decision No. 562 concluded that subsection (g) prohibits disclosure of the following information from a police or fire department personnel file: (1) information that is separately maintained in the civil service personnel file of the police officer or firefighter, and (2) any other information in the department's personnel file that is "reasonably related to a police officer's or firefighter's employment relationship" with the police or fire department. The documents comprising the police department personnel files of the Denton police officers (Attachment "C") consist of a combination of documents, some clearly prepared solely for personnel management purposes and many others that were originally prepared by the department in fulfillment of its public duties, such as case reports, arrest reports, criminal histories, vehicle accident reports, witness statements, general reports, notices of claims against the city, and identification reports.

We note that there has been no attempt to request the various reports contained in the files from their original sources. We believe that all of the information contained in the department personnel files reasonably relates to the officers' employment relationship with the police department. Consequently, the city is prohibited from releasing the documents contained in the department personnel files.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-205.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steve Aragon
Assistant Attorney General
Opinion Committee

SA/lmm

Ref. ID# 10076

cc: Mr. William M. Nelson
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